Triec, Inc. ***and*** **International Brotherhood of Electrical Workers, Local 669, AFL–CIO–CLC.** Cases 9–CA–26705, 9–CA–26955, and 9–RC–15522

November 21, 1990

DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On June 19, 1990, Administrative Law Judge Marvin Roth issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Triec, Inc., Springfield, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

IT IS FURTHER ORDERED that the election in Case 9–RC–15522 is set aside and the petition is dismissed.

[1] While the Respondent does not specifically except to certain credibility findings made by the judge, it nonetheless disputes these credibility resolutions in its brief. It is the Board's established policy not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Andrew L. Lang. Esq., for the General Counsel.
Fred A. Ungerman, Esq., of Dayton, Ohio, for the Respondent Employer.

DECISION

STATEMENT OF THE CASE

MARVIN ROTH, Administrative Law Judge. These consolidated cases were heard at Springfield, Ohio, on March 27, 1990. The charges were filed, respectively, on August 4 and November 1, 1989, by International Brotherhood of Electrical Workers, Local 669, AFL–CIO–CLC (the Union).[1] The consolidated complaint, which issued on December 12, alleges that Triec, Inc. (Respondent or the Company), violated Section 8(a)(1) and (5) of the National Labor Relations Act. The Company's answer denies the commission of the alleged unfair labor practices.

[1] All dates herein are for 1989 unless otherwise indicated. alleged unlawful or improper conduct occurred during the critical period between filing of the petition and the election. The Regional Director ordered that the unfair labor practice and the representation cases be consolidated for the purpose of hearing, ruling and decision by an administrative law judge, and that thereafter, the representation case be transferred to and continued before the Board.

On July 7 the Union filed a petition for a Board-conducted election (Case 9–RC–15522). Pursuant to a Stipulated Election Agreement approved by the Regional Director on July 27, an election was conducted on August 10, among the employees in the following appropriate unit:

> All full-time and regular part-time employees engaged in electrical work who are employed by Triec, Inc. out of its 2858 Collier Road, Springfield, Ohio location but excluding all office clerical employees, professional employees. guards and supervisors as defined in the National Labor Relations Act.

The tally of ballots showed that of approximately 12 eligible voters, 2 voted for the Union and 9 voted against the Union. There were no challenged ballots. The Union filed a timely objection to the conduct of the election. On September 29 the Regional Director issued his report on objection, finding that the objection covered essentially the same subject matter as the unfair labor practice complaint, and that a significant amount of the alleged unlawful or improper conduct occurred during the critical period between filing of the petition and the election. The Regional Director ordered that the unfair labor practice and the representation cases be consolidated for the purpose of hearing, ruling, and decision by an administrative law judge, and that, thereafter, the representation case be transferred to and continued before the Board.

All parties were afforded full opportunity to participate, to present relevant evidence, to argue orally, and to file briefs. Upon the entire record in this case,[2] and from my observation of the demeanor of the witnesses, and having considered the briefs submitted by General Counsel and the Company, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

The Company, a corporation with an office and place of business in Springfield, Ohio, is engaged as an electrical contractor in the building and construction industry. In the operation of its business, the Company annually performs services valued in excess of $50,000 outside of Ohio. I find, as the Company admits, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ISSUES

The principal issues in these cases are:

1. Whether the Company engaged in promises and grants of benefits, threats of job loss and other reprisal, withholding of wage increase and coercive interrogation, all in order to discourage support for the Union, and thereby violated Section 8(a)(1) of the Act.
2. Whether the election of August 10 should be set aside.
3. Whether by the above alleged unfair labor practices the Company precluded the holding of a fair election, and there-

[2] At p. 73, L. 25 of the transcript, ''warn'' should read ''worn.''

fore violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union as representative of the employees in the appropriate unit. There is no dispute as to the appropriate unit. In its brief (p. 8), the Company concedes that a ''bare'' majority of the employees in the unit signed authorization cards for the Union.

IV. THE COMPANY'S OPERATION, THE UNION'S ORGANIZATIONAL CAMPAIGN, THE UNION'S ALLEGED MAJORITY STATUS STATUS, AND COMPANY'S KNOWLEDGE OF UNION ACTIVITY

The Company commenced operations in 1985 as a merger of three electrical contracting firms owned respectively by Scott Yeazell, Dennis Jones, and Daniel Heaton. Yeazell, Jones, and Heaton are co-owners of the Company. Yeazell is corporate president and functions as chief executive, handling business and administration matters. Jones is primarily in charge of sales, marketing, and customer relations. Heaton, a skilled electrician, operates in the field. The Company included Heaton on its *Excelsior* list of employees eligible to vote, but now admits that Heaton was and is a co-owner and supervisor. Yeazell testified that the co-owners try to make business decisions by concensus, but that he has the final say. In May, and continuing until June 21, the Company had 10 electricians, i.e., unit employees.

In March employee Michael Parks contacted Union Representative Thomas Williams concerning union representation for the employees. The Union conducted meetings at its hall and at Parks' home. In May 6 of the 10 unit employees signed union authorization cards, captioned in bold capital letters ''AUTHORIZATION FOR REPRESENTATION.'' The text stated as follows:

> I authorize Local Union No. *669* of the International Brotherhood of Electrical Workers to represent me in collective bargaining with my present and future employers on all present and future jobsites within the jurisdiction of the Union. This Authorization is non-expiring, binding, and valid until such times as I submit a written revocation.

Williams testified in sum that he explained the benefits of unionization to the employees, and that he told each employee who signed a card that the employee had shown his commitment to Williams, and that Williams would show his commitment by trying to represent the employee. By letter dated June 3, enclosing copies of the signed authorization cards, the Union told the Company that it had signed cards from a majority of the employees in an appropriate unit, and requested recognition and bargaining. By letter dated June 9, the Company's attorney told the Union that the Company did not believe it represented a majority of the employees, and therefore would not recognize or bargain with the Union. In June the Company hired two new employees, and on June 30 one of the card signers, Michael Parks (the leading union adherent) quit his job. However, one of the new employees, Jeff Nickell, signed an authorization card on the day he began work (June 21). Nickell, who was presented as a company witness, testified that at a union meeting Representative Williams asked him if he wanted to sign a union card. Nickell initially testified that he understood that the card was an authorization to Williams to continue talking to him. Nickell then claimed that this was what Williams told him. Thereafter Nickell went back to his original assertion that this was his understanding of the card. Nickell testified in sum that he read the card before signing it, was capable of understanding the language, and that no one told him that the card did not mean what it said. Nickell never claimed that Williams said that the only purpose of the card was to authorize him to continue talking to Nickell. Nickell's sometime assertion as to what Williams allegedly said was incredible. Williams did not need a signed authorization card in order to talk to an employee. Even if I were to credit Nickell, the card would still be valid. *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 606 (1969); *NLRB v. WKRG-TV*, 470 F.2d 1302, 1317 (5th Cir. 1973); *Peerless of America, Inc. v. NLRB*, 484 F.2d 1108, 1117–1118 (7th Cir. 1973). Therefore the Union continued to hold valid authorization cards from a majority of the unit employees.

Employee Parks testified in sum as follows: In May, at an All-Phase Electric job, he told Company President Yeazell that IBEW was interested in having the Company as a union shop, and there would be an organizing effort. Parks did not tell Yeazell whether he was interested in a union. However one Sunday in late May, at his home, Parks told Co-owner Heaton that he thought the Union was a good idea because of the benefits which unionization offered. Heaton responded that they were better off as they were. On Monday, June 5, Parks was in the Company's offices. He saw an envelope from the Union on Yeazell's desk. (As will be discussed, the following day the Company conducted a meeting for employees, which is the subject of certain complaint allegations.) President Yeazell testified that he first learned of union activity on Friday, June 2. According to Yeazell, on that date salesman Keith Holmes informed the three co-owners that he was quitting to accept a better job offer. The owners asked if they could make a counteroffer. Holmes responded that he didn't think the Company could pay more because they were becoming unionized. Yeazell further testified that in mid-May, at the All-Phase job, Parks said he was contacted by the Union, but was happy at the Company and not interested in a union. Co-owner Heaton also testified that he first learned of union activity from salesman Holmes when he quit on June 2. However, Heaton did not deny Parks' testimony concerning their conversation at Parks' home. Co-owner Jones, in his testimony, contradicted Yeazell's testimony concerning when the Company learned about the organizing campaign. Jones testified that Holmes quit his job on the last Friday in May (May 26), and that the previous day (May 25) Holmes told him that the Company would be unionized. Jones further testified that employees told him they were seeing ''Mr. Williams, your neighbor,'' and that Jones understood from these remarks that the employees were attending union meetings. In sum, Jones was getting feedback concerning the organizing campaign directly from the employees. With regard to the Union's request for recognition, Yeazell testified that his secretary opened the letter, and he did not see it until the afternoon of June 6, after the meeting for employees that day. Yeazell's assertion is incredible. If as indicated by Parks, the letter was on Yeazell's desk, then it is obvious that Yeazell saw it. Given Yeazell's admitted knowledge of union activity, it is highly probable that his secretary would have immediately called the letter to Yeazell's attention. Although Yeazell's secretary was presented as a company witness, she did not corroborate Yeazell's testimony in this regard. The Company also failed to produce the original union letter at the hearing, although the letter probably would have indicated when it was stamped in as received. I credit Parks' testimony. I find in light of Parks' testimony and Jones' admissions, that by mid-May the Company was aware of the organizing campaign. I further find that Yeazell received the Union's letter prior to the June 6 meeting, and by reason of that letter, knew that a majority of the unit employees had signed union authorization cards.

V. THE ALLEGED UNFAIR LABOR PRACTICES AND OBJECTION TO THE ELECTION

A. *Alleged Unlawful Promises and Grants of Benefits, Threats of Job Loss and Other Reprisal, Withholding of Wage Increase, and Coercive Interrogation*

The Company had a written policy manual which was in effect until July 1. The manual outlined company policies, practices and procedures, and employee benefits. The manual stated, among other things, that ''pay raise evaluations'' would occur every 6 months, specifically, in January and July, and that raises if any would be effective February 1 and August 1. There would be no other pay increases. The manual provided for paid holidays, but not for paid vacations. The manual further provided that employees would provide their own handtools, although the Company would replace broken tools. The cost of the required handtools (30 items), was listed as $331.85. The manual also indicated that employees would enjoy pension plan coverage while assigned to a prevailing wage project, but would not otherwise be covered by a pension plan. It is undisputed that except in one respect, the foregoing reflected actual company practice until June 6. The testimony is in dispute as to whether and under what circumstances the Company made evaluations or gave pay raises as often as every 6 months. President Yeazell testified in sum that at least since 1986 the Company regularly conducted individual evaluation sessions in December and June, the sessions were conducted over lunch, with the Company paying for the employee's lunch, and most but not all employees received wages increases. Co-owner Heaton testified that he thought the Company followed the semiannual evaluation policy, and that most employees got semiannual raises. Michael Parks, who began working for the Company in the fall of 1987, testified that when hired the Company told him there would be evaluations every 6 months. Parks testified that he received a 50-cent-per-hour wage increase after working 8 to 9 months, but was never given an evaluation before June 6, 1989, although he requested an evaluation. Employee Jeffrey Tackett, who began working for the Company in March, testified that when hired he was not told anything about an evaluation or raises. Tackett was not evaluated until mid-June. Employee James Powell, who also began in March, testified that he was told there would be a 2-week probationary period followed by an evaluation. Powell was also not evaluated until mid-June. The Company did not present any employee witnesses concerning evaluations and wage increases. Yeazell and Heaton testified in sum that the Company kept no records of evaluations, although the Company's payroll records would reflect wage increases. If their testimony was true, then the payroll records would demonstrate a pattern of semiannual raises at regular intervals. The Company did not produce its payroll records at the hearing. The inference is warranted, and I so find, that if the Company had produced the payroll records, the records would not support the Company's position. If, as claimed by Yeazell and Heaton, the employees were regularly evaluated each June, then there would have been no reason to change the Company's policy in order to conduct evaluations in June 1989, whether to meet employee grievances or for any other reason. As has been and will be discussed, Yeazell's testimony was demonstrably lacking in credibility on several key matters. I credit the employees' testimony, in particular that of Parks. I find that prior to June 1989, the Company did not even follow a practice of semiannual evaluations as set forth in its manual, and that its failure to do so was a factor which led to the Union's organizational campaign.

On June 6 the Company summoned the unit employees to a meeting on company premises on their working time, for which the employees were paid. President Yeazell conducted the meeting. At the outset the Company distributed two documents. One was a new policy manual. This manual followed the format of the old manual, but contained several significant changes. The new manual provided for employee ''performance conferences'' every 3 months, and that any raises would occur as a result of these conferences. The new manual also provided for paid annual vacations of 1 week after the first year of employment. The new manual also stated that the Company would provide employee handtools (37 listed items at a total cost of $447.35). The second document was a conference schedule for the employees, with individual conferences scheduled during the period June 6 through July 7. The first conference was scheduled for Parks that same day (June 6). Yeazell proceeded to describe the manual changes which the Company was implementing, specifically, 3-month evaluation for pay raises, paid vacations, and handtools provided by the Company. The employees had not previously been informed of these changes, or that the Company would issue a new manual. Parks testified without contradiction that prior to June 6 Yeazell told him that the employees didn't work hard enough for a vacation. Employees Park, Tackett, and Powell testified in sum that at the June 6 meeting Yeazell said he heard that the Union was talking to some of the employees, that he didn't think they needed a union, and that the Company and the Union could work out their problems on a one-to-one basis. Parks, but no other witness, testified that Yeazell also said that the Company was working on a retirement program. For reasons which will be discussed, I find that this subject first came up at a later meeting.

President Yeazell in his testimony, admitted that at the June 6 meeting he told the employees that he didn't think the Company needed a union. Yeazell testified that issuance of the new manual, and announcement and implementation of the changes in the manual, was unrelated to the union organizational campaign. If so, then it is difficult to see why Yeazell would couple announcement of the changes with a statement that the Company didn't need a union. Nevertheless, Yeazell testified that the Company revised its manual, including improved benefits, and also decided to finalize a pension program, because of (1) the loss of two valued employees, Jeff Yeazell (President Yeazell's brother), and Steve Standley, and (2) feedback which Co-owner Heaton received from employees on the job. In support of this assertion, the Company presented further testimony by President Yeazell, Co-owners Heaton and Jones, and payroll clerk Deborah Collins. Heaton testified in sum as follows: In late April and continuing until May 12 he was working on a job in Georgia. Parks was also working on the job. Parks made many complaints, ''mostly about personalities.'' He wanted a raise, and communication more often than every 6 months. He did not complain about vacations, and he did not compare union wages and benefits with those at the Company. Heaton said he would see what he could do. After leaving the job Heaton went on vacation, and returned to the shop on Monday, May 22. Upon his return he met with his co-owners, and they discussed improving communications. Heaton suggested quarterly evaluations. They decided upon quarterly evaluations, pay levels comparable to those of two other employers in the area (Wittenburg and Honda) and paid vacations, and also to distribute a new manual. Standley and Jeff Yeazell left the Company on the Memorial Day weekend (May 27–29). The Company prepared the new manual during the week following Memorial Day. Heaton did not testify concerning any feedback from employees other than his Georgia conversations with Parks. Co-owner Jones testified that in mid-May the co-owners discussed policy manual changes, including paid vacation and a pension or profit-sharing plan, the discussions took place over several weeks, and they began discussing a pension plan in 1988. Jones testified that he did not know when they decided upon the policy manual changes. President Yeazell testified in sum as follows: On May 22 the co-owners met and decided upon the new policy manual. On or about May 23 they met with the secretaries present, dictated the wording of the new manual, and directed the secretaries to prepare the new manual. They also prepared the conference schedule. They changed ''evaluation'' to ''conference'' because they wanted to use these sessions as a means of obtaining employee feedback. Yeazell did not regard company provision of handtools as an employee benefit. The Company made this change because of confusion over whether tools belonged to the Company or the employee. According to Yeazell, on the day that Jeff Yeazell and Standley left, which was on or about May 21, there was an argument over ownership of their handtools. Yeazell admitted that the Company could have resolved such problems by requiring the employees to furnish and replace all of their handtools. Payroll clerk Collins testified in sum as follows: On a Wednesday prior to Tuesday, May 30, which was also before Jeff Yeazell and Standley left, the co-owners and the office staff had a meeting. They discussed changes in the policy manual. The secretaries suggested paid vacations because employees were leaving to get better benefits at other jobs. The co-owners agreed upon paid vacations effective as of July 1. President Yeazell said he was going to work on a pension plan for the employees. The secretaries proceeded to prepare a revised manual, which was completed within a few days.

In light of the testimony of Heaton, Jones, and Collins, the Company's explanation for the June 6 meeting and the revised policy manual falls flat on its face. In light of Jones' testimony, it is evident that he and President Yeazell began discussing policy changes in mid-May, even before Heaton returned to Springfield. At that time the co-owners did not know that Jeff Yeazell and Standley would be leaving, but they did know that the employees were attending union meetings. The testimony of Heaton and Collins indicates that Jeff Yeazell and Standley left the Company on the weekend of May 27 to 29. If as suggested by President Yeazell, they left on or about May 21, then the Company's payroll records would corroborate his testimony. However, the Company did not produce such records. The inference is warranted, and I so find, that Yeazell sought in his testimony to suggest the earlier date in order to bolster his explanation for the events of June 6. As for the alleged feedback from employees through Heaton, the only such feedback, as indicated by Heaton's testimony, consisted of Parks' personal complaints. According to Heaton, Parks did not complain about vacations, provision of handtools, or the need for a pension plan. If the Company wanted to meet Parks' complaints, then it could have done so by holding an evaluation and giving him a raise under the existing manual procedure. If the Company was concerned about loss of employees, the Company could and probably would have informed the employees as soon as possible that it was considering improvement of employee wages and benefits. There was no need to wait until a new manual was completed. (As will be discussed, after June 6 the Company told the employees that it was considering, and later that it intended, to implement a pension plan, although the Company still had not done so at the time of the present hearing.) Even after completing the revised manual, the Company waited until Tuesday, June 6, i.e., after the Union requested recognition, to announce the manual.

I find that upon learning of the union activity, the co-owners discussed ways of discouraging employee support for the Union. They met with the office clericals in order to learn causes of employee discontent. The clericals made suggestions, and the Company incorporated improvements in a standby revised manual. However, the Company did not intend to implement the manual unless absolutely necessary. The Company had long resisted paying higher wages or granting improved benefits. As indicated, the Company did not even consistently follow its policy of semiannual evaluation for wage increases, and told Parks that the employees did not deserve a paid vacation. Therefore the Company did not issue the revised manual until it learned that a majority of the unit employees signed authorization cards. At this point President Yeazell announced the changes, including quarterly reviews for wage increases, paid vacations and company-furnished handtools. These were substantial benefits to the employees. The quarterly reviews afforded the employees twice as many opportunities as before to qualify for wage increases. Lack of paid vacations was, as the Company learned from its clericals, a source of employee discontent. Company-furnished handtools were a substantial benefit, particularly to new employees. Under the guise of ''performance conferences,'' the Company used the quarterly reviews as a further means of sounding out the employees and applying additional pressure to discourage union support. I find that the Company announced and implemented quarterly wage reviews, paid vacations and company-furnished handtools in order to discourage employee support for the Union, and thereby violated Section 8(a)(1) of the Act. *NLRB v. Exchange Parts Co.*, 375 U.S. 405 (1964).

Employees Parks, Tackett, and Powell testified concerning their ''performance conferences.'' All conferences were scheduled at or about noon. Yeazell and a co-owner would take the employee out to lunch at a restaurant. The three named employees were interviewed by Yeazell and Jones. They met with Parks on June 6, following the employee meeting. They told Parks he was doing a good job, promoted him to crew leader, and gave him a $1-per-hour pay raise. Parks testified that Jones said they know he was involved with the Union, and asked if he had signed a card. He answered that he did. Yeazell testified that he did not recall the Union coming up in the conversation. I credit Parks. Tackett was interviewed on June 12. Yeazell and Jones told him he had not worked long enough to get a raise, but would probably get an evaluation in 3 months. Powell was interviewed on June 14. Yeazell told Powell he was doing a good job, and would get a raise in pay effective July 1. Powell received the raise, although he did not qualify for one. The Company hired Powell under an apprenticeship program, and he had not worked the requisite number of hours for a pay increase. I find that the Company implemented its quarterly wage review policy, including paid lunches, and gave wage increases to Parks and Powell in order to discourage employee support for the Union, and thereby violated Section 8(a)(1). These actions were a continuation of the unlawful course of conduct which commenced with the June 6 meeting, when the Company announced the quarterly reviews. I further find that the Company coercively interrogated Parks. Under different circumstances, Jones' question might have been lawful. As of June 6, the Company had received the Union's request for recognition, based on asserted majority support, which identified Parks as one of the card signers. Therefore the Company was asking Parks for information which the Union (Parks' designated bargaining representative) had already furnished to the Company. The Company could, with proper safeguards, attempt to verify the Union's claim of majority status. However, this was not such a case. First, President Yeazell testified (falsely) that he did not know of the Union's letter until he returned to his office on the afternoon of June 6. Therefore it is evident that the Company does not claim that it asked Parks whether he signed a union card, in order to verify the Union's claim. Second, the Company did not give Parks any assurance against reprisal. Rather, the Company questioned Parks in the context of unfair labor practices, including a pay raise and a paid lunch. In these circumstances, Jones' question constituted a form of pressure upon Parks to use the performance conference as an occasion to abandon his support for the Union. Therefore the Company violated Section 8(a)(1) by interrogating Parks as to whether he signed a union card. See *Struksnes Construction Co*., 165 NLRB 1062, 1063 (1967).

On June 12 the Company conducted another captive audience meeting for employees. All three co-owners were present. President Yeazell did most of the talking. Employees Parks, Tackett, and Powell testified in sum as follows: Yeazell asked the employees what it would take to keep the Union out. Parks spoke up. He said the employees wanted higher wages, a good health and welfare and retirement program, and a union apprentice program. Tackett also said that he wanted a retirement program. Yeazell said that the Company was working on some things, including a retirement plan, and would conduct another meeting. Employee James Gangwer, the Company's residential electrician, who had signed a union card, asked what would happen to the residential end of the Company's business if the Company went union. Co-owner Heaton answered that the Company would probably phase out the residential end, because of the increased expense in being union. Heaton also said that the Company would probably lose customers because some customers liked dealing with the same electricians. Yeazell told the employees to leave their tools at home, because the Company would be furnishing all handtools. Yeazell also said the Union might strike, in which event the Company had the right to hire more employees. Co-owner Heaton testified in sum as follows: He spoke at the meeting. He said that if the Company were a union shop, the atmosphere would probably change, and the Company would have to run a ''much tighter organization.'' He also said that if he had to increase prices, some customers would ''typically'' be lost. Heaton could not recall what else he said. Heaton did not testify as to what Yeazell said at the meeting. Co-owner Jones did not testify concerning the June 12 meeting. As Heaton and Yeazell were the only company witnesses to testify concerning that meeting, Yeazell's account of the meeting was uncorroborated by any other company witness. Yeazell testified in sum as follows: He said the Company felt they didn't need a union. He said the employees could come to the Company with their grievances on a one-to-one basis. The purpose of the meeting was to inform the employees of the Company's position on unionization. He did not promise benefits, and he did ask what it would take to keep the Union out. He could not recall what else he said. Heaton said that if the Company were unionized, it would have to raise rates for electrical work, and when this happened, ''you lose customers.''

As indicated, Yeazell's version of his remarks were uncorroborated by any other witnesses. Both Yeazell and Heaton professed to be unable to recall much of what was said. Their testimony, even considered together, patently reflected an incomplete account of the meeting. If Yeazell's version of what he said was correct, then the June 12 meeting was redundant and unnecessary. By his own admission, Yeazell said substantially the same thing on June 6, namely, that the Company didn't need a union. I credit the testimony of the employees. I find that Yeazell impliedly promised the employees increased benefits and improved terms and conditions of employment, all in order to discourage support for the Union, and thereby violated Section 8(a)(1). The applicable standard, as set forth in *Uarco, Inc*., 216 NLRB 1 (1974), is as follows:

> [T]he solicitation of grievances at preelection meetings carries with it an inference that an employer is implicitly promising to correct those inequities it discovers as a result of its inquiries. Thus, the Board has found unlawful interference with employee rights by an employer's solicitation of grievances during an organizational campaign although the employer merely stated it would look into or review the problem but did not commit itself to specific corrective action; the Board reasoned that employees would tend to anticipate improved conditions of employment which might make union representation unnecessary. However, it is not the solicitation of grievances itself that is coercive and violative of Section 8(a)(1), but the promise to correct grievances or a concurrent interrogation or polling about union sym-

> pathies that is unlawful; the solicitation of grievances merely raises an inference that the employer is making such a promise, which inference is rebuttable by the employer.

See also *Ace Hardware Corp*., 271 NLRB 1174 (1984). At the June 12 meeting Yeazell solicited employee grievances, but made no effort to rebut the inference that he was promising to remedy such grievances. Quite the contrary, Yeazell bluntly stated the purpose of the meeting by asking the employees what it would take to keep out the Union. After hearing from the employees Yeazell suggested that the Company was working on some things, thereby further intimating that there would be redress of grievances. (I shall defer to a later point in this decision, the specific matter of a retirement program.) By telling the employees to leave their personal tools at home, Yeazell implemented the Company's June 6 announcement that it would furnish all handtools, and thereby further violated Section 8(a)(1). I further find that the Company, by Heaton, threatened the employees with loss of jobs if they chose the Union as their representative. Heaton's assertion that unionization meant probable loss of the residential work, was not ''carefully phrased on the basis of objective fact.'' *NLRB v. Gissel Packing Co*., supra, 395 U.S at 618. Heaton equated loss of residential work, per se, with unionization, without even mentioning that wages, benefits, and other terms and conditions of employment affecting the cost of operations would be subject to bargaining between the Company and the Union. Moreover, Yeazell contradicted the premise for Heaton's assertion. Yeazell testified that at a meeting on July 21, he told the employees that the Company had a history of rising wages, but the Union had a history of flat or decreasing wages. In sum, the Company was telling the employees on one hand that unionization meant lower wages, and on the other, that the increased cost of unionization meant fewer jobs. Heaton's statements constituted an unlawful threat. *NLRB v. Gissel Packing Co*., supra.

On July 7 the Union filed its election petition, and on July 21 the Company conducted another captive audience meeting of employees. By this time Parks had quit the Company. Employee Powell testified in sum as follows: Yeazell and Heaton were present at the meeting. Yeazell told the employees that he and his co-owners decided not to accept the Union. He discussed the election procedures. Yeazell said that the Company did not charge union scale wages, and if the employees worked for the Union they would be on layoff for 6 months of the year. Yeazell said that the Company was working on a pension plan, and as the employees grew with the Company their wages would also grow. Employee Tackett testified that Yeazell said the Company decided not to be a union shop. Yeazell discussed the election, and said that union electricians worked only 6 months of the year, and were on layoff for 6 months. Co-owner Heaton testified with regard to the July 21 meeting, that he could not recall anything beyond what he testified concerning the June 6 and 12 meetings. Again, Yeazell's version of the meeting was uncorroborated by any other company witness. Yeazell testified in sum as follows: At the July 21 meeting he said that the Company ''desired'' not to be a union shop. He did not say ''decided.'' He did not forecast the future at that meeting. Yeazell said that the Company employed people year round, but that electricians often did not work year round. He said that the Company had a history or rising wages, but that union wages remained relatively flat or decreased. He did not mention a pension plan at this meeting.

I credit the testimony of employees Powell and Tackett to the effect that Yeazell said (1) the Company decided not to be union, and (2) union electricians worked only 6 months out of the year. As indicated, Yeazell's version was uncorroborated and he demonstrated lack of credibility on important matters in this proceeding. With regard to (2) above, Yeazell did not talk in terms of company practices, i.e., he did not simply argue that the Company had a history of providing steady employment. Rather Yeazell equated unionization, per se, with lack of regular employment. Yeazell thereby violated Section 8(a)(1) by threatening the employees with loss of employment if they selected the Union as their bargaining representative. I also credit Powell's uncontradicted testimony that Yeazell said that employees' wages would grow as they grew with the Company. Standing in isolation, such a statement might seem too vague as to constitute a promise of benefits if the employees rejected the Union. However, when considered in the context of the Company's new quarterly wage review system, which resulted in immediate raises for some employees, Yeazell's statement could reasonably be interpreted by the employees as a promise of further wage increases if the employees rejected unionization. The Company thereby further violated Section 8(a)(1). I am not persuaded that Yeazell mentioned retirement benefits at this meeting.[3]

Employee Powell testified in sum as follows: On July 27 he was working at the Northridge Elementary School job. He saw Co-owner Heaton. Heaton said, ''I know you're one of the most pro-union guys we have at the shop.'' Powell did not respond. (Powell testified that he was not openly prounion, and was afraid to answer.) Heaton asked what were the advantages and disadvantages of a union. Powell answered that the advantages were wages, health and welfare and pension, and the disadvantages were travel. On August 1 Heaton again approached Powell at work. He showed Powell an NLRB decision which purportedly held that an employer did not have to sign a contract. Heaton said that he wanted to give Powell a wage increase, but could not because wages were frozen until after the election. Heaton testified in sum as follows: He had a conversation with Powell at the Northridge job. They discussed ''common goals.'' Powell said he wanted to be a journeyman electrician. Heaton asked Powell whether he was in the Union, and what he would gain from the Union. Powell answered that union training was better than ABC (the apprentice program used by the Company). Heaton testified that he could not recall anything else about the conversation. Heaton did not deny

[3] The employees' testimony differed as to when Yeazell discussed a pension plan. As indicated, Parks testified that Yeazell said on June 12 that the Company was working on a pension plan. Powell testified that Yeazell said this on July 21. Tackett testified that he first heard about a company pension plan at a meeting on August 9. Yeazell admitted in his testimony that he spoke about a pension plan at the August 9 meeting. As Parks quit his job at the end of June, he must have heard about the plan in June. I find that Yeazell first mentioned the matter at the June 12 meeting. When Yeazell asked what it would take to keep out the Union, and employees complained about the lack of a pension plan, Yeazell responded that the Company was working on a plan. As will be discussed, at the August 9 meeting Yeazell again promised such a plan.

Powell's testimony concerning Heaton's reference to a pay raise. I credit Powell. I find that Heaton violated Section 8(a)(1) by telling Powell that he would not receive a pay raise because wages were frozen until after the election. It is settled law ''that during the preelection period an employer must grant or withhold benefits 'as he would if a union were not in the picture.''' *Gerkin Co.*, 279 NLRB 1012 (1986). By placing the onus on the Union for withholding benefits, the Company unlawfully threatened Powell. *Gerkin*, at fn. 5. I further find that Heaton violated Section 8(a)(1) by coercively interrogating Powell concerning his attitude toward the Union. Heaton had no legitimate reason for questioning Powell, and he gave no assurance against reprisal. Rather Heaton questioned Powell in the context of unlawful threats and promises of benefit. The questioning was coercive and unlawful.

Employee Tackett testified in sum as follows: On July 28, at the Ohio Stamping and Machine job, Co-owner Jones asked him what were the advantages of being a union contractor. Tackett answered that it would open doors for the Company. Jones asked how Tackett felt about the Union. Tackett answered that he wasn't sure. (Tackett was not openly prounion.) They did not discuss the apprenticeship program. Tackett planned to take the journeyman test after the union matter was settled. Jones testified in sum as follows: He visited jobsites during the election campaign and talked individually to employees, sometimes more than once. He had a conversation with Tackett at the Ohio Stamping job. He approached Tackett, saying he was waiting for an opportunity to talk. Tackett asked whether it was about the Union. Jones said it was, and asked Tackett what the Union meant for him. Tackett answered that he would have to take a journeyman's test. Jones asked about the pay scale. Tackett answered that if he passed he would get more. Tackett said he was upset because of a rumor that he was a company plant, and had mixed emotions about the whole union matter. Jones answered that he felt the same way. I credit Jones. In contrast to his other testimony, Jones gave a detailed version of this conversation. Nevertheless, I find on the basis of Jones' credited testimony, that he violated Section 8(a)(1) by coercively interrogating Tackett concerning what the Union meant to him. As with similar questioning by the co-owners, Jones had no legitimate reason to question Tackett, he gave no assurances against reprisal, and the questioning occurred in the context of unlawful threats and promises and grants of benefits.

On August 9, the day before the election, the Company conducted another captive audience meeting. The three owners were present, and all spoke. Yeazell conducted the meeting. Employee Tackett testified that Yeazell said wages and benefits would equal or surpass those of the Union, and the Company had been working on a pension plan since the beginning of the year. Tackett testified this was the first he heard about a company pension plan. Employee Powell similarly testified that Yeazell said the Company would have better wages and benefits than the Union. Yeazell asked the employees to vote no. Powell did not testify concerning any reference to a pension plan at this meeting. Co-owners Heaton and Jones testified, respectively, concerning what each of them said at the August 9 meeting, but not as to what President Yeazell said. Again, Yeazell's version of his remarks were uncorroborated by any other company witness. Yeazell testified in sum as follows: He again referred to the Company's history of rising wages, as contrasted with the Union's history of flat or decreasing wages. He did not make any promise concerning wages. Yeazell said that the Company had been investigating pension plans, and decided to implement a pension plan. This was the first time Yeazell told the employees about the plan, and he did not tell them when the plan would be implemented.

I credit the employees' testimony, in sum, that Yeazell said wages and benefits would equal or surpass those of the Union. For the reasons discussed in connection with the June 6 meeting, I find that the Company promised its employees better wages and benefits in order to discourage support for the Union, and thereby violated Section 8(a)(1). As indicated, there is no dispute that Yeazell announced a pension plan at the August 9 meeting. However, there is dispute as to the origin and motivation of this announcement. President Yeazell testified in sum as follows: In December 1988 the Company conducted pay raise evaluations. At these evaluations the Company asked the employees whether they were interested in a pension plan. The co-owners then met, and concluded that a pension plan was needed to keep career employees. They agreed that Yeazell would investigate all types of plans, and decide which insurer and which plan was best for the Company. Yeazell contacted one insurer and looked at one plan. Thereafter Yeazell did absolutely nothing about the matter until he met with his co-owners on May 22, when they decided upon the revised policy manual. At that time they decided to implement a pension plan. They did so for the same reasons they decided upon other changes, namely, because of the loss of two employees and the feedback which Heaton got from employees on the job. Nevertheless Yeazell did nothing more about a pension plan until July. In July and August 1989 and February 1990, respectively, Yeazell contacted three more insurers and received a plan from each. As of the present hearing (March 27, 1990), the Company was considering the four submitted plans and anticipated deciding upon implementation within the next 30 days. Co-owners Heaton and Jones corroborated Yeazell's narrative, although in less detail, indicating that they left to Yeazell the matter of investigating and deciding upon a pension plan.

Yeazell's explanation was patently false. Assuming, as testified by Yeazell, that the Company first considered a pension plan in December 1988, it is evident from Yeazell's own narrative that after a cursory investigation, the Company decided against proceeding with such a plan.[4] Yeazell checked with one insurer, and for the next 6 months did nothing more about the matter. As found, prior to learning of the union campaign, Yeazell said that the employees did not work hard enough to deserve a paid vacation. It is unlikely that Yeazell would have been more favorably disposed to give them a pension plan. Yeazell's narrative was hopelessly contradictory. Yeazell variously testified that the Com-

[4] Yeazell's reference to pay raise evaluations in December 1988 is at best questionable. As found, the Company did not adhere to its asserted policy of conducting semiannual evaluations. Yeazell testified that he revised the manual to change ''evaluation'' to ''conference'' in order to use these sessions to obtain employee feedback. If so, then in December 1988 the Company would not have used the evaluations in order to ask employees for their opinions about a pension plan. If the Company did so, then Yeazell's explanation for the manual change would be false. Either way, Yeazell's credibility is impugned.

pany (1) decided in December 1988 to implement a pension plan, (2) decided on May 22 to implement a pension plan, and (3) anticipated deciding upon implementation of a pension plan in or about April 1990. I find that the Company first seriously considered a pension plan on May 22, when the co-owners decided to draft a revised policy manual. They did so for the same reason, namely, as as standby plan for combatting the Union in the event the organizational campaign was successful. When the Union requested recognition, demonstrating that the campaign proved successful, the Company swiftly moved to implement quarterly wage reviews, including wage increases, paid vacations, and company-furnished handtools. The Company was not yet ready or willing to implement a pension plan. However, upon questioning the employees as to what it would take to keep out the Union, the Company learned that the employees regarded a pension plan as an important matter. Therefore Yeazell impliedly promised the employees that such a plan would be forthcoming, by telling them that the Company was working on such a plan. Yeazell did so at the meetings on June 6 and August 9. The Company thereby violated Section 8(a)(1) by promising that the Company would provide a pension plan, in order to discourage employee support for the Union.

B. *Concluding Findings with Respect to the Union's Objection to the Election*

As indicated, the Union's objection to the election parallels the allegations of the complaint. In determining whether an election should be set aside, the critical period is that between the date the petition was filed and the date of the election (here, the period from July 7 to August 10). Prepetition improper or unlawful conduct may be considered insofar as such conduct lends ''meaning and dimension'' to the postpetition conduct. *Blue Bird Body Co.*, 251 NLRB 1481 fn. 2 (1980), enfd. 677 F.2d 112 (5th Cir. 1982). Here, during the critical period, the Company conducted meetings of employees (on July 21 and August 9) at which it threatened the employees with loss of employment if they selected the Union as their bargaining representative, and promised the employees wage increases, a pension plan, and wages and benefits equal to or better than those of the Union, all in order to discourage employee support for the Union. During the critical period the Company also coercively interrogated employees Powell and Tackett, and threatened that wages would be frozen until after the election. These unfair labor practices constituted conduct which interfered with the exercise of the employees' free choice in the election. See, e.g., *Gerkin Co.*, supra. Therefore I am sustaining the Union's objection to the election, and recommending that the election be set aside.

C. *The Alleged Violation of Section 8(a)(5) and the Propriety of a Bargaining Order*

The next question presented is whether by reason of the Company's unlawful conduct, I should find that the Company unlawfully failed or refused to recognize and bargain with the Union, and therefore, that a remedial bargaining order is warranted. The applicable standard is set forth in the landmark case of *NLRB v. Gissel Packing Co.*, 395 U.S 575, 613–615 (1969). As the *Gissel* rationale has been the subject of much discussion and citation, some of it erroneous, I find it useful to quote at length from that decision. In *Gissel* the Supreme Court held as follows:

> Before considering whether the bargaining orders were appropriately entered in these cases, we should summarize the factors that go into a determination. Despite our reversal of the Fourth Circuit below in Nos. 573 and 691 on all major issues, the actual area of disagreement between our position here and that of the Fourth Circuit is not large as a practical matter. While refusing to validate the general use of a bargaining order in reliance on cards, the Fourth Circuit nevertheless left open the possibility of imposing a bargaining order, without need of inquiry into majority status on the basis of cards or otherwise, *in ''exceptional'' cases marked by ''outrageous'' and ''pervasive'' unfair labor practices. Such an order would be an appropriate remedy for those practices*, the court noted, *if they are of ''such a nature that their coercive effects cannot be eliminated by the application of traditional remedies. with the result that a fair and reliable election cannot be had.''* The Board itself, we should add, has long had a similar policy of issuing a bargaining order, in the absence of a § 8(a)(5) violation or even a bargaining demand, when that was the only available, effective remedy for substantial unfair labor practices. . . .
>
> *The only effect of our holding here is to approve the Board's use of the bargaining order in less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election processes*. The Board's authority to issue such an order on a lesser showing of employer misconduct is appropriate, we should reemphasize, where there is also a showing that at one point the union had a majority; in such a case, of course, effectuating ascertainable employee free choice becomes as important a goal as deterring employer misbehavior. In fashioning a remedy in the exercise of its discretion, then, the Board can properly take into consideration the extensiveness of an employer's unfair labor practices in terms of their past effect on election conditions and the likelihood of their recurrence in the future. *If the Board finds that the possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order, then such an order should issue.*
>
> We emphasize that *under the Board's remedial power there is still a third category of minor or less extensive unfair labor practices, which, because of their minimal impact on the election machinery, will not sustain a bargaining order*. There is, the Board says, no *per se* rule that the commission of any unfair labor practice will automatically result in a § 8(a)(5) violation and the issuance of an order to bargain. [Citations omitted; emphasis added.]

In sum, the Supreme Court identified two categories of cases in which a bargaining order might be appropriate, and a third in which such a remedial order would not be appropriate. As indicated, in determining whether an election should be set aside, the Board will consider employer conduct from the date the petition was filed until the date of the election. However, once the Board has determined that the election should be set aside, the Board will consider the employer's overall course of conduct, including prepetition conduct, in determining whether a bargaining order should issue. *Trading Port, Inc*., 219 NLRB 298, 301 (1975).

Upon consideration of the evidence, I find that this case falls at least into the second category of cases under *Gissel*, and meets the *Gissel* standards for issuance of a bargaining order. I find specifically that: (1) A majority of employees in the appropriate unit validly signed union authorization cards, and on the basis of that majority status the Union requested bargaining; (2) Upon receiving the Union's request the Company embarked upon an unlawful course of conduct which destroyed the Union's majority status; and (3) a fair rerun election cannot be held in the circumstances of this case. The Company extended, in full sweep, the ''fist inside the velvet glove.'' *NLRB v. Exchange Parts*, supra, 375 U.S. at 409. Upon learning that the Union was engaged in an organizational campaign which appeared on the verge of success, the Company's co-owners, in consultation with their clerical personnel, carefully considered what grievances brought about that campaign. The Company devised a plan to destroy the union campaign through promises and grants of benefits directed at the principal areas of employee dissatisfaction, i.e., to steal the Union's thunder. Upon learning that a majority signed union cards, the Company, before even responding to the Union's request for recognition, immediately swung into action. The Company summoned the unit employees to a meeting, informing them of quarterly pay increase reviews (which would begin immediately), paid vacations, and company-furnished handtools. The Company did not rest at this point. The Company again summoned the employees to a meeting, bluntly asking them what else it would take to keep out the Union. The Company learned that the employees wanted a pension plan, a benefit which the Company previously considered and rejected. The Company was neither ready nor willing to implement a pension plan at this time. However, in order to assure the Union's defeat, the Company dangled before the employees the prospect of a pension plan, by repeatedly telling them that it was working on such a plan, thereby creating the impression that a pension plan was imminent. The major benefits promised or implemented by the Company, specifically, quarterly pay increase reviews and a pension plan, were far reaching in nature. By promising and implementing quarterly reviews, the Company held out the promise of frequent pay increases (whether or not true, and of course, subject to the Company's whims, particularly if the Union sought to renew its organizational efforts). The Board has on more than one occasion pointed out that unlawfully granted wage increases or benefits ''are particularly lasting in their effect on employees and difficult to remedy by traditional means . . . not only because of their significance to the employees, but also because the Board's traditional remedies do not require the Respondent to withdraw the benefits from the employees.'' *Camvac International*, 288 NLRB 816, 820 (1988); *Color Tech Corp*., 286 NLRB 476, 477 (1987). See also *Red Barn System*, 224 NLRB 1586 (1976), enfd. 574 F.2d 315 (6th Cir. 1978); *Michigan Products*, 236 NLRB 1143, 1147 (1978).

Lest the employees mistake the import of its message, the Company coupled its promises and grants of benefit with threats of dire consequences if the employees were so foolhardy as to choose the Union as their representative. The Company did not go so far as to threaten the ultimate penalty, i.e., plant closure. However, the Company went only slightly short of such conduct by threatening the employees with loss of their job security. The Company threatened its employees that in the event of unionization, they would work only 6 months out of the year, and that residential work would probably be phased out, with consequent loss of employment. In view of the employees' ''natural interest in continued employment,'' such threats are particularly serious and long lasting in their effect. Cf. *Indiana Cal-Pro v. NLRB*, 863 F.2d 1292, 1301 (6th Cir. 1988).

I further find that neither a conventional Board cease-and-desist order, the passage of time, nor employee turnover, nor a combination of these factors, would likely result in conditions which would allow uncoerced employee choice in a free and fair election. The Company has shown no disposition to alter its unlawful course of conduct. As of the present hearing, the Company was still suggesting to its employees that it was about to implement a pension plan, i.e., a promise which was devised as a means of discouraging support for the Union. As discussed, the Company's unlawful conduct was far reaching in nature. The evidence indicates that the Company tends to attract employees who are interested in long-term employment. Thus the employees demonstrated particular concern about such matters as job security, periodic wage reviews, and a pension plan. It is also significant that this case involves a relatively small unit of employees, and that the unfair labor practices were committed by top-level management. *Indiana Cal-Pro v. NLRB*, supra.[5] I find that the Company violated Section 8(a)(5) and (1) of the Act by failing to recognize and bargain with the Union on and after June 6, 1989, when it commenced its unlawful course of conduct, and that a bargaining order is warranted. *Trading Port*, supra, 219 NLRB at 301.

CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time employees engaged in electrical work who are employed by Respondent out of its 2858 Collier Road, Springfield, Ohio location but excluding all office clerical employees, professional employees, guards, and supervisors as defined in the National Labor Relations Act, constitute a unit appropriate for the purposes of

[5] The cases relied upon by the Company (br. 8) did not involve situations comparable to that in the present case. In *Uarco, Inc*., 286 NLRB 55, 59 (1987), and *Blue Grass Industries*, 287 NLRB 274, 275–276 (1987), the Board reversed key findings of violations of Sec. 8(a)(1), thereby undercutting the basis for the administrative law judge's recommendation that a bargaining order should issue. In *Schwartz Mfg. Co*., 289 NLRB 874, 893–894 (1988), the administrative law judge found that the principal violations of Sec. 8(a)(1) were committed by one first line supervisor near the outset of the union campaign, and that the principal violations of Sec. 8(a)(3) were substantially remedied by the employer. Therefore he did not recommend a bargaining order. In the present case the violations were committed by top-level management, and persisted throughout the campaign and beyond.

collective bargaining within the meaning of Section 9(b) of the Act.

4. By promising and implementing wage increases, benefits, and other changes in terms and conditions of employment in order to discourage employee support for the Union, by threatening employees with loss of employment and loss of job security if they chose the Union as their bargaining representative, by threatening to withhold wage increases because of a pending Board-conducted election, and by coercively interrogating its employees concerning their union attitude and activities, the Company has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, and thereby has violated and is violating Section 8(a)(1) of the Act.

5. The Union's objection in Case 9–RC–15522 has been sustained by the evidence, and the Company thereby interfered with the Board election on August 10, 1989.

6. By the conduct set forth in paragraph 4 above, the Company interfered with the employees' freedom of choice in the election, and precluded any reasonable possibility of a fair and uncoerced rerun election.

7. Since June 6, 1989, the Union has been and is, the exclusive collective-bargaining representative of the Company's employees in the unit described above.

8. By failing and refusing since June 6, 1989, to recognize and bargain with the Union as the exclusive bargaining representative of the employees in the above appropriate unit, the Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

9. The aforesaid labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that the Company has committed violations of Section 8(a)(1) and (5) of the Act, I shall recommend that it be required to cease and desist therefrom. In view of the extensive and continuing nature of the Company's unlawful conduct, which demonstrates a general disregard for employees' fundamental statutory rights, I shall recommend that the Company be ordered to cease and desist from in any other manner infringing upon the rights guaranteed its employees in Section 7 of the Act. As heretofore found, affirmative relief is also appropriate here. I shall direct the Company to recognize and to bargain collectively, upon request, with the Union as the exclusive bargaining representative of the employees in the unit found appropriate herein, and to embody any understanding reached in a signed agreement. The remedial order will also include the customary provisions relating to the posting of notices and related matters.

Finally, I shall recommend that the election in Case 9–RC–15522 aside and, in view of the bargaining order entered herein, that Case 9–RC–15522 be dismissed.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

The Respondent, Triec, Inc., Springfield, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening its employees with loss of jobs or job security, loss of work or loss of wage increases if they designate, select, or support International Brotherhood of Electrical Workers, Local 669, AFL–CIO–CLC, or any other labor organization as their bargaining representative, or withholding of wage increases because of union activity or a pending Board-conducted election.

(b) Coercively interrogating employees about their union attitude or activities.

(c) Promising or granting wage increases, benefits, or other improvements in terms and conditions of employment, or redressing grievances, in order to discourage support for the Union; provided, however, that nothing herein shall be construed as requiring Respondent to vary or abandon any economic benefit or any term or condition of employment which it has heretofore established.

(d) Refusing to recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of its employees in the above-described appropriate unit.

(e) In other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain collectively in good faith with the Union as the exclusive bargaining representative of the employees in the unit described above, and embody in a signed agreement any understanding reached.

(b) Post at its office and place of business in Springfield, Ohio, copies of the attached notice marked "Appendix."[7] Copies of the notice on forms provided by the Regional Director for Region 9, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

It is further recommended that the election in Case 9–RC–15522 be set aside and that the proceeding be dismissed.

[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten you with loss of job security, loss of work or loss of wage increases if you designate, select, or support International Brotherhood of Electrical Workers, Local 669, AFL–CIO–CLC, or any other labor organization as your bargaining representative, or withholding of wage increases because of union activity or a pending Board-conducted election.

WE WILL NOT coercively question you about your union attitude or activities.

WE WILL NOT promise or grant wage increases, benefits, or other improvements in terms and conditions of employment, or remedy grievances, in order to discourage support for Local 669; provided, however, that nothing herein requires us to vary or abandon any economic benefit or any term or condition of employment which we have heretofore established.

WE WILL NOT refuse to recognize or bargain collectively with Local 669 as the exclusive bargaining representative of our employees in the following appropriate unit:

> All full-time and regular part-time employees engaged in electrical work who are employed by us out of our 2858 Collier Road, Springfield, Ohio location but excluding all office clerical employees, professional employees, guards and supervisors as defined in the National Labor Relations Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of your right to engage in union or concerted activities, or to refrain therefrom.

WE WILL recognize and, on request, bargain collectively in good faith with Local 669 as the exclusive bargaining representative of our employees in the unit described above, and embody in a signed agreement any understanding reached.

TRIEC, INC.